



August 8, 2001

Ms. Janice Mullenix
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2001-3461

Dear Ms. Mullenix:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150450.

The Texas Department of Transportation (the "department") received a request for information relating to a proposed construction project including information relating to bids. You state that you are providing the requested information to the requestor with the exception of two documents. You claim that the submitted documents are excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that the submitted information is subject to the attorney-client privilege and is excepted under sections 552.101 and 552.107 of the Government Code. We note that in Open Records Decision No. 574 (1990), this office determined that the statutory predecessor to section 552.107(1) was the appropriate section for a governmental body to cite when seeking to except from required public disclosure communications between the governmental body and its legal counsel. Section 552.107(1) excepts information that an attorney of a political subdivision cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. ORD 574 at 3. In addition, purely factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.*

You state that one communication was made from a department employee to a department attorney for the purpose of requesting a legal opinion. You represent that the other submitted document is a communication of a attorney's legal advice to a department employee. After reviewing the submitted information, we conclude that the submitted documents reveal the client's communications or an attorney's legal opinion or advice. Therefore, we agree that you may withhold the submitted documents under section 552.107(1) of the Government Code. Having found the information to be excepted under section 552.107, we need not address the applicability of section 552.111 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

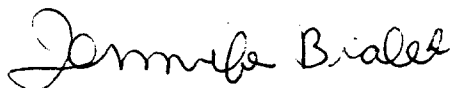
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Jennifer Bialek".

Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/sdk

Ref: ID# 150450

Enc: Submitted documents

c: Mr. Mart Jordan
President
Jordan Paving Corporation
3925 Carbon Road
Irving, Texas 75038-3402
(w/o enclosures)